CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

April 24, 1998

S. 981
Regulatory Improvement Act of 1998

As ordered reported by the Senate Committee on Governmental Affairs on March 10, 1998

SUMMARY

S. 981 would amend Chapter 6 of Title 5, U.S. Code, to require federal agencies to complete specific studies as part of the regulatory analysis performed before major rules are issued. (The bill would define a major rule as a regulatory action expected to have an impact on the economy of $100 million or more annually.) It would require agencies to conduct cost-benefit studies, risk assessments, and peer reviews before finalizing certain major rules. In addition, the bill would require that agencies select existing major rules for review to determine if modifying such rules would reduce the cost of compliance for state and local governments and private-sector entities. Agency compliance with the regulatory analysis provisions of S. 981 would be subject to judicial review in certain circumstances.

Enacting the bill would increase the cost of regulatory analysis at federal agencies that regulate health, safety, and the environment. Based on information from these agencies, on our review of the number and type of major rules issued in fiscal year 1997, and on past costs of regulatory analyses, CBO estimates that implementing S. 981 would increase the government's cost to perform regulatory analyses by between $20 million and $30 million annually, subject to appropriation of the necessary amounts.

In addition, the bill would increase costs at the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) to write regulations and contract for a pair of studies, and at agencies that regulate health, safety, and the environment to devise detailed guidelines for performing risk-assessment analyses. CBO estimates that enacting S. 981 would increase such administrative costs by about $5 million over the 1999-2003 period.

S. 981 could result in additional costs to federal agencies beyond those we have estimated. Under S. 981, OMB could require that agencies perform risk assessments according to the bill's detailed procedures for agency actions, other than major rules, that it believes could

have a substantial impact on a significant public policy or on the economy. CBO assumes however, that the bill's procedures for conducting risk assessments would be applied only in the case of major rules. If OMB were to require that agencies apply the bill's risk assessment procedures to other agency actions that include an assessment of risk, the additional costs could be substantial.

CBO also has not included costs that might be incurred as the result of additional judicial review because we have no basis for predicting how many regulatory actions might be challenged under this bill. While the bill would require that agencies review past rules, CBO estimates that such costs would not be significant over the next five years because agencies are required to review existing rules periodically under current law.

CBO estimates that enacting the bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Much of the regulatory analysis and review that would be required by S. 981 is already performed to some degree by federal agencies. In addition, the bill would exempt many federal regulatory actions from its requirements, including rules that apply to or regulate: (1) governmental receipts, (2) certain commerce activities, including wages and prices, mergers and acquisitions, and accounting practices, (3) securities trading, (4) monetary and federal fiscal policy, (5) banking, and (6) new products. In addition, the bill would exempt certain regulations of the Federal Communications Commission and any rule that an agency must issue at least annually. Based on a preliminary review of the approximately 60 major rules issued in fiscal year 1997, CBO estimates more than half would be exempt from the bill's requirements because they involve some form of economic regulation.

Agencies also could exempt rules from the bill’s provisions where the more detailed reviews are either not practical or contrary to an important public interest. In such cases, the bill would direct the agency to comply with its provisions as soon as possible after adopting the rule, unless the rule is set to expire.

CBO expects that enacting S. 981 would have a small impact on the cost to perform regulatory analyses for most agencies because the bill: (1) would codify much of existing practice, (2) would generally not apply to so-called "minor" rules, (3) would exempt many regulatory provisions from its review, and (4) would allow agencies to opt out of its requirements in certain situations. The bill, however, could significantly increase costs for agencies that issue major rules governing health, safety, and the environment, such as the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Departments of Health and Human Services, Transportation, and Agriculture.

CBO estimates that S. 981 would increase the costs of issuing new major rules for federal agencies by between $20 million and $30 million a year. In addition, we estimate the bill would increase administrative costs by about $5 million over the 1999-2003 period. All costs would be subject to the availability of appropriated funds.

Finally, the bill would establish procedures for agencies to review past rules. Periodic review of major rules already is required under current law (section 610 of the Regulatory Flexibility Act of 1980) and current policy (section 5 of Executive Order 12866), although not as frequently as would be called for under S. 981. Under the bill, agencies would have considerable discretion in deciding which rules to examine and whether to revise or repeal a rule. Based on information provided by various agencies, we expect that agencies would revise or repeal a rule only if strong and compelling evidence existed that a core assumption was in error. Because most such regulatory revisions would likely be made under current law, CBO expects that agencies would not incur significant additional costs over the 1999-2003 period for the review of existing regulations.

Impact on EPA

Based on information from EPA, CBO estimates the agency spends about $120 million annually on regulatory analysis, and S. 981 would add $1 million to $2 million to each major regulatory action that would be covered by the bill to pay for added or improved economic studies and risk assessments. In 1997, EPA finalized seven major rules that would appear to be covered by S. 981. Since the provisions of the bill would also apply to preliminary rules, and because the volume of regulatory activity fluctuates, we estimate that implementing S. 981 would increase the cost of EPA's regulatory analyses by $10 million to $15 million annually, assuming appropriation of the necessary amounts.

Impact on Other Agencies

In 1997, CBO published a paper that examined the costs of 85 regulatory impact analyses (RIAs) conducted by selected agencies (*Regulatory Impact Analysis: Costs at Selected Agencies and Implications for the Legislative Process*, March 1997). The cost of these RIAs ranged from as low as $14,000 to as high as $6 million, with the time required to complete them ranging from six weeks to more than 12 years. (Because the paper did not attempt to obtain a representative sample of RIAs, it does not indicate the cost of a "typical" or "average" RIA.)

In addition, the paper showed that RIAs were more expensive at EPA than at other agencies. Based on that paper, as well as on information provided by OSHA and the National Highway Traffic Safety Administration (NHTSA), we expect that the increase in costs under S. 981 would be greater at EPA than at other regulatory agencies. Specifically, we estimate the bill would add, on average, less than $1 million per rule to the cost of the regulatory analysis for most major rules promulgated by agencies other than EPA.

The increase in cost per rule would likely vary, depending on the complexity of the rule. For instance, in fiscal year 1997, NHTSA issued two major rules, one of which S. 981 would exempt. Based on information from NHTSA, CBO estimates that the agency spent less than $1 million on the nonexempt rule. Because we expect that, on average, the bill would increase the costs to perform the regulatory analysis for a rule by less than one-half, the additional costs under S. 981 for this rule would have amounted to less than $500,000.

By comparison, OSHA issued one major rule in fiscal year 1997 and the agency spent about 10 years to complete that rule. Based on information from OSHA, CBO estimates that the agency spent as much as $5 million performing regulatory analysis of the rule. As part of this analysis, OSHA performed numerous risk assessments, although those assessments did not include all of the information that S. 981 would require, such as providing additional information on the ranges and distributions of risks addressed by the rule, requesting and considering data submitted by the public, and fully documenting each assumption. Based on this information, we estimate that by broadening the scope and effort of OSHA's analysis, S. 981 would have added $1 million to $2 million in total over several years to the rule's cost. For most major rules issued by OSHA, however, we expect that implementing the bill would increase costs by less than $1 million per rule.

Based on our review of the type and number of major rules issued during fiscal year 1997, we expect the bill's provisions would apply to about 25 rules a year (including those promulgated by EPA), although the volume of regulatory activity can fluctuate depending on the demands on regulatory agencies. (As noted above, agencies issued about 60 major rules in 1997, and at least half of those would have been exempt from the new review requirements of S. 981. A similar number of major rules were issued in 1996.) Thus, CBO estimates that enacting S. 981 would increase costs for the 15 to 20 nonexempt rules issued by agencies other than EPA by between $10 million and $15 million annually—about the same amount as the estimated increase in EPA's costs.

Reporting, Oversight, and Implementation Costs

In addition to the increase in costs to issue new major rules, S. 981 would impose several reporting and oversight requirements on the Administration, which would be carried mostly by OIRA. Specifically, the bill would require that OIRA: (1) issue guidelines for cost-benefit analyses, risk assessments, and peer reviews and periodically evaluate agency efforts in implementing these guidelines, (2) periodically evaluate and develop a strategy to meet agency needs for research and training in performing regulatory-impact analyses, and (3) contract with accredited scientific institutions to study the use of risk assessments and comparative-risk analysis in performing regulatory analyses. The bill would require that the results of the research on risk assessments be forwarded to OMB and the Congress within two years of enactment and that the results of the research on comparative-risk analyses be forwarded within three years of enactment. CBO estimates that implementing these provisions would cost OIRA about $2 million over the 1999-2003 period, assuming appropriation of the necessary funds.

In addition, under the bill, the roughly one-half dozen agencies that issue health, safety, and environmental regulations would have 18 months to adopt detailed guidelines for performing risk assessments as part of their regulatory impact analyses. In total, CBO estimates that these agencies would incur costs of about $3 million over fiscal years 2001 and 2002 to develop those guidelines.

PAY-AS-YOU-GO CONSIDERATIONS: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 981 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

PREVIOUS CBO ESTIMATE

CBO prepared an estimate of the costs of S. 981 on April 20, 1998. This revised estimate clarifies the discussion of the bill's provisions and CBO's assumptions, but the estimated costs of S. 981 are unchanged.

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